IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]
Description of Case

Government Appeal No. 1097 of 2001 Decided on: May 24, 2006

(Old No. 561 of 1984)

~~**A.F.R. (Approved for Reporting)**~~
Not approved for reporting

Date. 24.05.2006

Initials of Judge

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judges for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Government Appeal (Against Acquittal) No. 1097 of 2001
(Old No. 561 of 1984)

The State …….. Appellant

Versus

1. Ram Sahai
   S/o Deep Chand
2. Chhadami
   S/o Deep Chand
3. Nathu S/o Chhadami
4. Leeladhar S/o Ram Sahai
5. Bhagirath S/o Ram Sahai
6. Chiranji S/o Ram Sahai
   All R/o Village Tanda Dalchand,
   P.S. Bazpur, District Nainital.
7. Badri S/o Khiwal Singh
   R/o Village Falnagar,
   P.S. Civil Lines, Distt. Rampur.
8. Ram Bir S/o Kedar
   R/o Village Nadirpur, P.S. Mundakhera,
   Distt. Moradabad. ……. Respondents

Mr. D.K. Sharma, Govt. Advocate for the appellant-State.
Mr. J.S. Virk, Advocate for the respondents.

Coram : Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

Dated: May 24, 2006.

[Per Hon'ble Prafulla C. Pant, J.]

This appeal, preferred under Section 378 of the code of Criminal Procedure, 1973, is directed against judgment and order dated 14.11.1983, passed in Session Trial No. 149 of 1980 by, the then, learned II Additional Sessions Judge, Nainital, whereby the respondents Ram Sahai,

Chhadami, Nathu, Leeladhar, Bhagirath, Chiranji, Badri and Rambir have been acquitted of the charges of offences punishable under Section 148, 302 / 149, 307 / 149 of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.). Nathu has been acquitted not only of the aforesaid charges but also from the charge under Section 25 and 27 of the Arms Act, 1959. This appeal against acquittal was originally filed before the Allahabad High Court in February, 1994. The leave was granted and appeal was admitted on 19.02.1985 by said Court. The appeal is received by transfer by this Court, for its disposal, under Section 35 of the U.P. Re-organization Act, 2000.

2) According to the prosecution story, on 10.04.1980, P.W. 2, Fateh Singh along with his uncle Sant Singh (deceased) and sister P.W. 3, Km. Rohini alias Kukku, in car bearing registration number U.S.S./4561, was going to examination center, Rudrapur so that Km. Rohini alias Kukku may appear in her Home Science paper of Class 10^{th}. When they were passing on a road near village Dalchand, at about 1:40 P.M., accused / respondents Ram Sahai and Chhadami waived their hands in front of the car to stop the same. Sant Singh (deceased) who was driving the car stopped it. Meanwhile, from the eastern side other six accused / respondents namely, Nathu, Leeladhar, Bhagirath, Chiranji, Badri and Rambir, who were in an ambush in the ditches by the side of the road, also came near the car. They all were armed with Laathis. All the accused / respondents surrounded the car and started hurling abused at Sant Singh. As soon as, Sant Singh (deceased) alighted from the car, accused / respondents

Chiranji, Leeladhar, Nathu, Jhunda alias Bhagirath wielded laathis on him and caused several injuries on his person. On this, Sant Singh opened fire from his revolver in his self defence hitting accuse/ respondents Chiranji and Leeladhar, However, the revolver, thereafter, was snatched from Sant Singh by accused / respondent Nathu, who fired back from the revolver at Sant Singh. Simultaneously, accused / respondents Junda alias Bharigath, Ram Sahai, Rambir and Badri started wielding laathis on Fatch Singh (P.W. 2) and Km. Rohini (P.W. 3). But, on raising alarm by Fateh Singh and Km. Rahini, accused / respondents fled towards the village. Accused / respondent Nathu fled with the revolver of Sant Singh. Injured Fateh Singh and Km. Rohini when came near Sant Singh, they found that he has died. According to the prosecution case, P.W. 6, Om Prakash also witnessed the occurrence. P.W. 2, Fateh Singh lodged the first information report (Ext.A-1) with the police station Bazpur. On the basis of said report a check report (Ext. A-13) was prepared and an endorsement of the same was made in the general diary (copy of extract of which is Ext. A -14) by Head Constable Abdul Gani (P.W. 11). P.W. 12, Vikram Singh, Station Office of police station Bazpur started the investigation of the crime. During investigation, inquest report (Ext. A -10) was prepared of the dead body of deceased which was sent for postmortem examination. The Investigating Officer also got prepared sketch of dead body (Ext. A -20), police form No. 13 (Ext. A -19), Police form No. 33 (Ext. A -18), site plan of the place of occurrence (Ext. A -21). Also, apart from getting injured Fateh Singh (P.W.2) and Km. Rohini

(P.W. 3) medically examined, accused / respondents Chiranji and Leeladhar were also medically examined. P.W. 5, Dr. M. Hussain conducted postmortem examination on the dead body of deceased Sant Singh. After recording the statements of witnesses, P.W. 12 Vikram Singh (Investigating Officer) submitted chare sheet (Ext. A -24) against all the eight accused persons for their trial under Section 147, 148, 323 and 302 of the I.P.C. The learned Magistrate on receiving the charge sheet registered the same, and after giving necessary copies to all the accused persons, committed the case to the court of Sessions. The learned Sessions Judge, after hearing the prosecution and accused persons, framed charge against the accused/ respondents namely, Ram Sahai, Chhandami, Leeladhar, Jhunda alias Bhagirath, Chiranji, Badri and Rambir of the offence punishable under Section 148, 302/ 149 and under Section 307 / 149 of the I.P.C. Charge of offence punishable under Section 148, 302 / 149 and 307 /149 of the I.P.C. and that of Section 25 and 27 of the Arms Act, 1959 were framed against accused / respondent Nathu. All the accused / respondents pleaded not guilty and claimed to be tried.

3) The prosecution got examined P.W. 1, Constable Hoshiyar Singh (who took the dead body along with necessary papers for the postmortem examination); P.W. 2, Fateh Singh (injured and informant); P.W. 3, Km. Rohini alias Kukku (injured); P.W. 4, Dr. S.K. Tewari (who examined the injuries of above two injured persons); P.W. 5, Dr. M. Hussain (who conducted the post mortem examination of the dead body of Sant Singh and also

recorded injuries on the person of accused Chiranji and Leeladhar); P.W. 6, Om Prakash (an eyewitness); P.W. 7, Mahendra Pal Singh [witness of the preparation of inquest report and recovery memos of blood stained soil and broken glasses of the car (Ext. A -5 & Ext. A -6)]; P.W. 8, Head Constable Rajmal Singh (who took the injured persons for medical examination); P.W. 9, Satnam Singh (another witness of preparation of inquest report); P.W. 10, Keshav Dutt Nainwal (a witness who deposed that Km. Rohini was a private student of High School in the year 1980 with Roll No. 1126767); P.W. 11, Cadet Sub Inspector Abdul Gani (who was posted as Head Constable on the day of incident with the police station Bazpur and prepared check report Ext. A -13 and made endorsement in the general diary, copy of extract of which is Ext. A-14 and P.W. 12, Vikram Singh (Investigating Officer). The oral and documentary evidence were put to the accused / respondents under Section 313 of the Code of Criminal Procedure, 1973 (for brevity hereinafter Cr.P.C.). The accused persons in their examination alleged that the evidence adduced against them was false and they have been falsely implicated in the case due to enmity. In his reply under Section 313 of the Cr.P.C., accused / respondent Chranji Lal has stated that at the time of incident he was coming from the side of Gular Bhoj and Sant Singh was on his scooter. According to this accused / respondent, it was deceased Sant Singh, who started hurling abuses at him and left the place after giving threat to see him. Soon thereafter, Sant Singh came back in his car and fired at Chranji Lal and Leeladhar at the same place. This

accused / respondent further states that on hearing noise of fire immediately villages rushed at the spot and they wielded laathis on the deceased. Learned Sessions Judge after going through the evidence on record found that the charges framed against the accused persons are not proved beyond reasonable doubt and as such, giving them benefit of doubt acquitted all the accused persons of the charges framed against them. Aggrieved by the judgment and order of the trial court, the State has filed this appeal against acquittal of aforesaid accused persons, with the leave of the court.

4) We heard learned Government Advocate / Public Prosecutor for the appellant-State and Mr. J.S. Virk, learned counsel for the accused / respondents and perused the entire evidence on record.

5) P.W.5, Dr. M. Hussain, conducted the autopsy of the deceased Sant Singh on 11.04.1980, at about 7:00 A.M., at Kashipur. He found following ante mortem injuries on the body of the deceased:

i) ***Lacerated wound 3.2 X 4.5 cm X bone deep on back of top of head with commuted fracture of occipital bone.***

ii) ***Lacerated wound 2.5 cm X 1.5 cm X bone deep over the left side of face 2 cm away from left angle of mouth with fracture of mandible commuted and lower middle and left outer and canine teeth missing.***

iii) ***Lacerated wound 3 cm X 1 cm on right temple bone deep.***

iv) ***Multiple lacerated wound in area 30 cm X 18 cm varying 12 cm X 4 cm to 6 cm X 3 cm including whole of face left upper lip and forehead and from one temple to another temple with commuted fracture of frontal both temporal, both maxilla bone. Bleeding from both ears present. There is fracture of occipital in pieces and laceration of membranes and brain.***

v) ***Lacerated wound 4 cm X 3 cm on middle of head bone deep with fracture of parietal bones.***

vi) ***Multiple abrasions in are 15 cm X 3 cm on back of left forearm and hand varying from 2 cm X 0.5 cm to ½ cm X ½ cm.***

vii) ***Lacerated wound 3 cm X 2.5 cm bone deep with evulsion of nail and distal phalyux is fractured. The protion of the tip of thumb is partly mission. The nail is attached with skin.***

viii) ***Abrasion 1 cm X ½ cm on the base of right thumb.***

ix) ***Abrasion 3 cm X 2 cm on the back of left shoulder.***

x) ***Contusion 12 cm X 4 cm on back of right shoulder.***

According to the Medical Officer, who conducted the postmortem examination, the death of Sant Singh was due to ante mortem injuries resulting into coma.

6) First of all, it is pertinent to mention here the injuries received by the injured witnesses and the accused / respondents. Dr. M. Hussain (P.W. 5) besides conducting postmortem examination on the dead body also examined injuries on person of accused persons Chiranji and Leeladhar on 10.04.1980, at about 7:15 P.M. and 7:25 P.M., respectively, and prepared the reports Ext. B -1 and

Ext. B -2. Following injuries were found on the person of accused Chranji:

> ***Gunshot injury 1 cm X 8/10 cm X bone deep on left side of chin 1 cm left of midline. There is swelling on chin and upper half of neck. The wound is blackened at the margins.***

Following are the injuries found on the person of accused Leeladhar by the same Medical Officer:

i) ***Gunshot wound 1 cm X 8/10 cm X cavity deep on right side chest just above rib margins 7 cm right to midline and 11.5 cm below the right nipple. Margins of wound were blackened and inverted. It was a wound of entry.***

ii) ***Gunshot wound 1.5 cm X 1 cm X cavity deep on right lateral side of abdomen just below margins of ribs, 8 cm above iliac crest. Margins were everted. Half of the injury was tattooed and lacerated. It was wound of exit.***

7) Dr. S.K. Tewari (P.W. 4) on the day of incident i.e. 10.04.1980, at about 4:50 P.M. and 5:15 P.M., respectively, medically examined injured Fateh Singh and injured Km. Rohini and prepared reports Ext. A -2 and Ext. A -3. Following injuries were found by the Medical officer on the person of Fateh Singh:

i) ***Three bruises cylindrical in shape on the back; (a) first one 7 inch X 1 inch in size, red in colour, from the second thorasic spine, approximately to 1 inch to 2 inch below the inferior angle of right scapula, set obliquely; (b) second one 8 inch X 1 inch in size, red***

in colour, starting from the midline at the level of eight thorasic spine, set obliquely, running approximately parallel to the lower castal margins on the right side; (c) third one 7.5 inch X 1 inch in size, red in colour, with the abrasion over it, set obliquely on the left side of the back starting from the midline at the level of 10th or 11th thorasic spine going inferio – laterally to the left.

ii) ***One bruise mark on the back of right forearm of the size of about 5 inch X 1 inch, set obliquely.***

iii) ***One bruise red in colour over the back of left forearm of the size of about 5.5 inch X½ inch in size with a linear abrasion over it running vertically.***

iv) ***Another bruise over the lower part of the back of left forearm running horizontally of the size of 3 inch X 0.7 inch approximately red in colour.***

v) ***One swelling with tenderness of the size of 2 inch X 1 inch approximately, oval in shape with diffused margins over the scalp slightly to the left of midline over the occipietal region.***

On medical examination, following injuries were found on the person of Km. Rohini alias Kukku:

i) ***Bruise red in colour, elongated 2 inch X 1 inch approximately in size on the ulnar aspect of right hand, quite tender on examination.***

ii) ***Incised wound skin deep 1 cm X 0.2 cm approximately in size in the web between the right thumb and the index finger.***

iii) ***One diffused swelling approximately oval in shape over the right lateral aspect of scalop.***

iv) ***One bruise elongated red in colour 5 inch X 1 inch in size below the inferior angle of scapula set obliquely on the right side.***

8) From the above narration of injuries on the person of prosecution witnesses and the two of the accused persons and the reply of the accused Chiranji Lal, it is clear that there was serious injuries on both the sides. On one hand, Sant Singh suffered lathi blows and died of the injuries while on the other hand, out of the accused / respondents Chiranji and Leeladhar received firearm injuries. Injuries on the side of any of the party cannot be ignored as superficial or self-inflicted. In the first information report (Ext. A -1), the explanation given is that deceased caused injuries in self-defence. On the other hand, from the replies given by Chiranji in his statement under Section 313 of the Cr.P.C., it appears that the deceased was the aggressor. Considering the oral and documentary evidence on record, we are of the view that the deceased if given lathi blows by eight persons together could not have been able to fire shots from the revolver. In the circumstances, it is difficult to say with certainty that accused were aggressors. From the cross-examination of P.W.2, Fateh Singh, it is clear, that Sant Singh was facing trial in a murder case apart from that he had also faced trial under Section 376 of the I.P.C. for alleged rape on the wife of one Sohan Lal. Though, the character of the deceased is not much relevant, but it is relevant to the extent that it cannot be denied that he might have been aggressor because of his criminal history.

9) As far as the statement of the eyewitness, Om Prakash is concerned, he has rightly been disbelieved by the learned Sessions Judge as he has not seen the actual occurrence of the incident but he only saw accused / respondents fleeing away from the place of incident. What is material in this case is who was the aggressor out of the two parties. Since, prosecution has failed to establish beyond reasonable doubt that it were the accused / respondents who were aggressor, as such, we are in agreement with the learned Sessions Judge that the accused / respondents were entitled to the benefit of reasonable doubt as the charges could not have been said to have been proved beyond reasonable doubt. Snatching of the revolver from deceased Sant Singh by accused Nathu also indicates that it is quite possible that after deceased shot fires at Leeladhar and Chiranji, the accused / respondents were, in fact, defending themselves to get saved from being hit by the gunshots. P.W. 11, Sub Inspector Abdul Gani, in his cross-examination admits that when he reached the spot he found accused Chiranji and Leeladhar lying in an unconscious condition. This fact cannot be ignored easily. The defence has taken the case before the trial court that the accuses persons, except the injured, had also gone to lodge the first information report to the police station but their report was not lodged, instead, they were arrested by the police. No doubt, the statement of P.W.2, Fateh Singh and P.W. 3, Km. Rohini alias Kukku, who are the injured persons, do indicate that they witnessed the incident but at the same time in the nature of the crime their evidence cannot be blindly believed, as they are the near relatives of

the deceased and were certainly interested to see that the accused get punished, as the aforesaid witnesses have lost their uncle Sant Singh. It appears they have not stated truly, who was the aggressor. We are in agreement with the reasons expressed by learned Sessions Judge that prosecution witnesses have not come with the full and true facts and have concealed a part of the story which, in fact, raises a reasonable doubt as the commission of crime by accused persons.

10) For the reasons as discussed above, we are of the view that the accused / respondents were rightly acquitted of the charges of the offence punishable under section 148, 302/149 and 307/149 of the I.P.C. on the ground that the charges are not proved beyond reasonable doubt. As such there appears no error of fact or that of law committed by the trial court in acquitting the accused / respondents. Accordingly, the appeal is liable to be dismissed. The same is hereby dismiss.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt. May 24, 2006.
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